

Form 16A. CAPTION (FULL)

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United States Bankruptcy Court

Portland District Of Oregon

In re EDWARD J. MERRALL,)

[Set forth here all names including married,
maiden, and trade names used by debtor within
last 8 years.])

Debtor) Case No. 05-48761-Tmb7

Address P. O. BOX 617)

JOHN DAY, OR 97845) Chapter 7)

Last four digits of Social Security No(s): 9367)

Employer's Tax Identification No(s). [if any]: N/A)

COMPLAINT
ADVERSARY PROCEEDING

06-3142-TMB

[Designation of Character of Paper]

Adversary Proceeding to determine the dischargeability of
student loan debt as defined in 11 USC § 523(a)(8).
 I.

Jurisdiction is provided by 28 USC § 1334

28 USC § 157(b)(1)

28 USC § 157(b)(2)(1)

II.

Plaintiff/Debtor has continuously resided in the State of Oregon since 1989, and is currently a resident of Grant County, Oregon.

III.

Plaintiff asserts and maintains the following:

The factual matters in this case may present a matter of first impression.

The facts when presented at trial will demonstrate and support that if Plaintiff is barred from discharging his student Loan debt it will impose on-going undue hardship on him.

Plaintiff was awarded a B.S. Degree in Wildlife Science in March 1995.

Plaintiff filed a civil action in Benton County District Court against said entity (OSU) in 1996 for violations of Oregon and Federal labor law.

Plaintiff subsequently prevailed in that action.

Plaintiff has, in fact, endured on-going undue hardships, in a variety of ways, since prevailing in that action in 1996.

Plaintiff will present, at trial, sufficient evidence of said hardships.

As a result of prevailing in the aforementioned civil action Plaintiff has been effectively ‘blacklisted’ by employees/agents of Oregon State University (OSU).

1
2 Notwithstanding Plaintiff's demonstrable superior qualifications and his continuously
3 diligent and rigorous efforts to secure employment in his newly chosen field he has been
4 unable to secure employment in said field of endeavor.

5
6 Plaintiff has held only two temporary positions since maturation of his Student Loan
7 debt.

8
9 Plaintiff's peers, of significantly younger age cohort, have had no difficulty securing
10 employment in the same field of endeavor as Plaintiff.

12
13 Plaintiff was, in fact, homeless and grossly underemployed from January, 1996 until
14 April, 2000.

15
16 Due to said circumstances Plaintiff was unable to mount any good faith effort to repay his
17 student loan debt.

19
20 Plaintiff has realized no benefit from the educational experience he duly completed in
21 1995 and for the foreseeable future he will derive none.

22
23 Plaintiff respectfully submits that the evidence will support that he can meet the three
24 prong test imposed by the 9th Circuit Court of Appeals in In re Pena 155 F.3d 1108 (9th
25
26

1 Cir, 1998) and Brunner v. New York State Higher Education Services Corp., 831 F.2d
2 395 (2nd Cir. 1987).

3
4
5
6 Whereas, Plaintiff asserts that the evidence presented at trial will prove the imposition of
7 undue hardship upon him as briefly described above, he prays that the Court provide him
8 relief in the form of discharge of his total Student Loan debt in the amounts previously
9 set forth in his Amended/Supplemental Schedules E, F, and Summary Schedule. Plaintiff
10 incorporates by reference herein said Amended/Supplemental Schedules and makes them
11 a part of this Complaint.

12 *Respectfully submitted.*

13 Edward J. Merrall, Pro se

14 P.O. Box 617

15 John Day, OR 97845

16 541-575-5538

17 March 13, 2006

18 I, Edward J. Merrall do hereby certify that I will immediately serve a true and exact copy
19 of this Complaint upon the duly authorized representatives of all Defendants specified in
20 the Caption of this Complaint via USPS Certified Mail and upon completion of said
service provide Proof of such Service of Process to the Clerk of the Court.

21
22 Edward J. Merrall, Pro se

23 March 13, 2006

ADVERSARY PROCEEDING COVER SHEET
(Instructions on Reverse)ADVERSARY PROCEEDING NUMBER
(Court Use Only)

06-3142-TMB

PLAINTIFFS

EDWARD J. MERRALL, DEBTOR

CLERK US BANKRUPTCY COURT
PORTLAND, OREGON

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DEFENDANTS

United States Dept of Education
 Sallie Mae Servicing Corp.
 Oregon State University
 Educational Credit Management Corp.
 any other assignor and/or guarantor

ATTORNEYS (Firm Name, Address, and Telephone No.)

Phone# 541-575-5538, 620-4363
 EDWARD J. MERRALL, PRO SE
 P.O.BOX 617 JOHN DAY, OR 97845

ATTORNEYS (If Known)

unknown

PARTY (Check one box only)

 1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 U.S. NOT A PARTY

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

- ① Adversary Proceeding to determine the dischargeability of student loan debt in accordance with the provisions of 11 USC § 523(a)(8) due to imposition of undue hardship.
- ② Jurisdiction is found at 28 USC § 1334, § 157(b)(1) and (b)(2)(I).

NATURE OF SUIT

(Check the one most appropriate box only.)

- | | | |
|-------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 454 To Recover Money or Property | <input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan | <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action |
| <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property | <input checked="" type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523 | <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court |
| <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property | <input type="checkbox"/> 434 To obtain an injunction or other equitable relief | <input type="checkbox"/> 498 Other (specify) |
| <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727 | <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan | |

ORIGIN OF PROCEEDINGS

 1 Original Proceeding 2 Removed Proceeding 4 Reinstated or Reopened 5 Transferred from Another Bankruptcy Court CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 56,8200.00

OTHER RELIEF SOUGHT

Discharge of Student Loan Debt

 JURY DEMAND
Check only if demanded in complaint

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES

NAME OF DEBTOR

EDWARD J. MERRALL

BANKRUPTCY CASE NO.

305-48761-TMB7

DISTRICT IN WHICH CASE IS PENDING

PORTLAND, OREGON

DIVISIONAL OFFICE

PORTLAND

NAME OF JUDGE

Trish M. Brown

RELATED ADVERSARY PROCEEDING (IF ANY)

PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE
FILING FEE (Check one box only.)	<input type="checkbox"/> FEE ATTACHED	<input type="checkbox"/> FEE NOT REQUIRED
		<input type="checkbox"/> FEE IS DEFERRED
DATE	PRINT NAME	SIGNATURE OF ATTORNEY (OR PLAINTIFF)